

Tough Law to Open U.S.

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Files

The massive files of the executive branch of the federal government are about to be thrown open to public inspection in an action probably unprecedented in any government in history.

Tough new amendments to the 1966 Freedom of Information Act — pushed into law over vigorous objections from the federal bureaucracy and over a presidential veto — go into effect Feb. 19.

But, for all practical purposes, many of the most important of the new rules are in effect now since requests for files turned down before Feb. 19 can simply be renewed that day. In effect, a revolutionary change in the way requests for information are handled has already begun.

The FBI — which led the unsuccessful effort to exempt law enforcement investigatory files from the provisions of the law — has already doubled the staff in its year-old freedom of information office and further increases are likely.

In an action obviously influenced by the new amendments, FBI Director Clarence M. Kelley agreed last week to a request from nine newsmen for access to a vast amount of material — including investigatory files — connected with the FBI's campaign to disrupt suspected subversive organizations between 1956 and 1971.

ALTHOUGH the opening of investigatory files — after certain information has been removed — is the most dramatic effect of the new amendments, the law also does these other things designed to make it easier for citizens to see government records:

• Anyone who asks for a record or document must be told within 10 days whether it will be furnished. If the answer is yes, it then must be furnished "promptly." In the past, the average

time between a request and response was 33 days. This change is especially important to news organizations for whom a lengthy delay is often as bad as a denial:

• Individual officials who turn down requests must be identified, both to the person whose request was denied and in an annual report to Congress. If information is withheld "arbitrarily or capriciously" the person responsible may be disciplined or punished for contempt of court. While action against any federal official is unlikely, the fact that it is possible is expected to apply pressure for the quicker release of more information.

• Federal agencies may only charge the cost of locating and reproducing records, and fees are not to be used as a means of denying anyone access to federal files. Fees might still be substantial. But this is a dramatic change from the practice followed by the FBI since the summer of 1973 when then-Atty. Gen. Elliot L. Richardson opened files more than 15 years old to scholars. One historian was told his request would cost him \$12,895 for processing, and the first materials provided to him indicated the total cost could come to some \$155,000.

• Those who go to court after being turned down are guaranteed speedy legal action. And, if they win in the courts, the government may be forced to pay their attorney fees and court costs. This provision should encourage those who think they have a good case to test it. In the past, the cost of suing the government have discouraged some who thought they had a right to see government files.

• The government may still withhold information under nine different exceptions to the law. But, under the new amendments, a person who asks for a document is entitled to receive it after material covered by the exceptions has been re-

moved. This means classified documents must be released after specific classified information has been removed from them. Under the earlier law, one bit of classified information was sufficient to prevent the release of an entire document.

• If there is disagreement over whether classified information should be released, a judge is now entitled to determine whether the information was properly classified under national security rules laid down by the president, even if the judge has to take a private look at the document himself. This provision was one of the major objections raised by President Ford in his veto message.

The new rules will require some significant changes in the way the government agencies do business. The Food and Drug Administration, for example, has prepared a set of instructions that runs to 300 typewritten pages telling those seeking information from the agency where to find it and how to go about getting it.

In a preliminary guidance provided to the rest of the government last week, Atty. Gen. William B. Saxbe warned that the 10 days an agency has to reply to a request for information begins to run as soon as the request is received — even if it sits in the mailroom for a few days. He urged the other agencies to let people know exactly how to request information and then to set up special procedures so requests will be recognized and acted upon swiftly.

AT THE PENTAGON, Robert Gilliat, the official in the general counsel's office who is responsible for the Defense Department's freedom-of-information effort, said he hoped to have a set of guidelines written by the end of the year. He noted that a recent presidential order requires that

the classification of each paragraph of a classified document be indicated. This, he said, would make it much easier to respond to requests for information — if the rule is being followed.

When the amendments were being considered in Congress, one of the major objections raised by the bureaucracy was the cost of examining thousands of documents and making a reasonable decision on whether or not they should be released. But Congress got no good estimate on how much it will cost to handle requests under the new amendments and government officials say they have no idea what the costs will be.

One reason for this uncertainty is that no one knows how many requests for government files will be stimulated by the new amendments. In the last seven years, most of the requests for documents have not come from news organizations — which have been the most vocal supporters of laws expanding access to government files — but from big business firms which could afford the time and money it often takes to get files and which often stood to win important business advantages from the files.

Under the new rules, news organizations may be much more aggressive in applying for information because both the cost and the time involved will be reduced.

ANOTHER REASON for the uncertainty is that the law sets time limits on a response to a request for information but it is less specific about what happens next. It simply says that "records shall be made promptly available."

James Farrington, who heads the FBI's freedom-of-information office, said the definition of this clause will make a crucial difference in

how much it costs to process with the law. If "promptly" means each new request goes at the bottom of the stack and is processed when the staff gets to it, costs might be relatively low but there will undoubtedly be long delays in the delivery of documents.

If, on the other hand, it means each request must be processed as promptly as possible, the cost will be greater and the service will be quicker.

In July 1973, when Richardson directed the FBI to start making some old files available under certain conditions, three agents and three review analysts were assigned to the office. The staff was recently expanded to five agents and eight review analysts and Farrington expects other increases may be necessary as the requests for information begin to roll in.

The new amendments may well stimulate requests for documents from an unexpected group of people — convicted criminals. There is nothing in the law to prevent a person convicted as the result of an FBI investigation or a probe by the Internal Revenue Service from asking for the complete investigatory file in his case. Although the file would be censored to re-

move copies of information and confidential information, a convict reading the file on his own case might well make some shrewd guesses on who had informed against him.

Another possibility that troubles some government officials is the number of requests that might come in from school children. Government offices get thousands of requests each year for what amounts to help on homework and most of them receive a form response.

BUT NOW, a child's request for "all you have in your files about the Kennedy assassination" is backed up by law and the bureaucrat who does not treat it seriously may be in deep trouble.

When these fears were expressed to Congress, the executive branch was told to try to work under the new law and, if it proves unworkable or too expensive, to come back with suggested changes or requests for more money.

If it is any comfort to the rest of the government, the Food and Drug Administration put strict, new freedom-of-information rules into effect 2½ years ago, reversing a policy that had barred public access to most documents. Peter Hutt, general counsel for the agency, says the rules have worked remarkably well despite the predictions of disaster that were heard before the change was made.

Now, FDA officials even go so far as to make public the names of those who visit their offices or who they talk to on the phone — something not yet required by law.